Daria Rożniakowska

Suspension from office in light of the principle of irremovability of judges in Poland

Judicial independence is commonly regarded as a fundamental requirement for any state that seeks to be governed by the rule of law[[1]](#footnote-1). The principle of irremovability of a judge is crucial in ensuring the independence of judges. It guarantees the stability in the exercise of judicial functions and frees judges from dependence on the appointing authority, authorities of the state, or any other entity[[2]](#footnote-2). This principle is enforced by several prohibitions, including the prohibition of the suspension of a judge from office. The purpose of this publication is to analyse the Polish legal provisions that allow for the suspension of a judge and their scope of application in the context of the case law of the European Court of Human Rights.

The Polish Constitution provides in Article 180 that judges shall not be removed from office and that a judge may be removed from office, suspended from office, transferred to another bench or another position against his will only by virtue of a court decision and only in the cases provided for by statute[[3]](#footnote-3). Under Polish law it is possible to suspend a judge from office in two circumstances: if disciplinary (and incapacitation) or criminal proceedings are instituted against him, or by a decision of the Minister of Justice or the presiding judge of the court[[4]](#footnote-4). This paper will focus on suspensionfrom office in disciplinary proceedings and by a decision of the Minister of Justice or the presiding judge of the court since they have been the most controversial in recent years.

Suspension from office in disciplinary proceedings

According to section 129(1) of the Act on the Organisation of Ordinary Courts, a disciplinary court may suspend a judge against whom disciplinary proceedings have been initiated[[5]](#footnote-5). When suspending a judge from his duties, the disciplinary court shall reduce, within the limits of 25% to 50%, the amount of his remuneration for the duration of such suspension. Where disciplinary proceedings have been discontinued or resulted in an acquittal, all components of the salary or emolument shall be adjusted to the full amount.

The purpose of suspending a judge, when evidence suggests a disciplinary offence has been committed, is to ensure that the administration of justice is not compromised by allowing the judge to continue adjudicating before the outcome of the proceeding[[6]](#footnote-6). Therefore, if allowing the judge to rule pending the outcome of the underlying proceedings does not compromise the interests of justice, the judge should not be suspended from office. Since in disciplinary proceedings the suspension is not obligatory, the decision on such a provision may involve a variety of situations and is not always linked to the disciplinary offence itself.

The case law of the European Court of Human Rights

It is important to note that the European Convention on Human Rights does not automatically prohibit all disciplinary proceedings against judges and that the case law of the European Court of Human Rights (ECHR) does not currently allow for the protection of a judge's subjective right to have their independence safeguarded and such a right cannot be derived from Article 6 of the Convention[[7]](#footnote-7). However, judicial independence is protected by other means in the event of a complaint raised by a judge. Based on the ECHR's jurisprudence, the suspension of a judge from office in certain circumstances could potentially lead to a violation of Article 6 (right to a fair hearing), Article 8 (right to respect for private life), and Article 10 (freedom of expression) of the Convention.

Regarding Article 6 of the Convention, judges who wish to protect their independence may argue that they had no effective legal remedies to challenge the means imposed on them, as demonstrated in the *Baka v. Hungary* case[[8]](#footnote-8), where the premature termination of the applicant's mandate as President of the Supreme Court was not reviewed by an ordinary tribunal or other body exercising judicial powers. This was found to violate the applicant's right of access to a court, as guaranteed by Article 6 § 1 of the Convention. Similar reasoning was applied in the case of Polish judge Juszczyszyn[[9]](#footnote-9). The applicant argued that his right to a tribunal established by law had been violated because the Disciplinary Chamber of the Supreme Court had decided his suspension. The European Court of Human Rights (ECHR) concluded that the Disciplinary Chamber of the Supreme Court was not a 'tribunal established by law' and that there was no legal avenue under domestic law through which the applicant could appeal against his suspension to a judicial body satisfying the requirements of Article 6 § 1 of the Convention[[10]](#footnote-10).

A measure such as dismissal may interfere with an individual's right to respect for their private life, as outlined in Article 8 of the Convention if the measure is not 'in accordance with the law', is not ‘necessary in a democratic society’ and lacks a legitimate aim as listed in Article 8 § 2 of the Convention[[11]](#footnote-11). In *Denisov v. Ukraine*, the ECHR clarified that even when the reasons for imposing a measure are not related to an individual's private life (such as in cases where judges are punished strictly for the exercise of their judicial functions), an issue under Article 8 may still arise due to the impact of those measures on the judge’s private life[[12]](#footnote-12). In such cases, the Court employed the consequence-based approach, provided that the consequences reached a certain threshold of severity[[13]](#footnote-13). Regarding judge Juszczyszyn, the ECHR found that the applicant's suspension had a significant impact on his private life, falling under Article 8 due to the nature (he could be perceived as being unworthy of performing a judicial function) and duration (he had been prevented from exercising his judicial duties, constituting his fundamental professional role, for more than two years) of the negative effects[[14]](#footnote-14). Similar conclusions have been made in the case of judge Tuleya[[15]](#footnote-15).

Lastly, the national measures imposed on judges may be challenged on the basis that they violate Article 10 of the Convention. In the *Baka v. Hungary* case, which was mentioned above, the applicant argued that the termination of his mandate as President of the Supreme Court was a result of the views he had publicly expressed, and therefore violated his right to freedom of expression[[16]](#footnote-16). In judge Tuleya’s case, the ECHR found that there were reasons to believe, given the general context, that the lifting of the applicant’s immunity had been a disguised punishment for his criticism of the ongoing judicial reforms[[17]](#footnote-17).

Suspension by a decision of the Minister of Justice or the presiding judge of the court

The section 130 of the Act on the Organisation of Ordinary Courts permits the Minister of Justice or the president of the court to react immediately if a judge is caught committing an intentional offence or if the nature of the act committed by a judge requires their immediate removal from duty to protect the dignity of the court or important interests of the judiciary[[18]](#footnote-18). In the indicated situations, an immediate suspension of the judge's duties may be ordered, lasting no longer than one month. There were several concerns with this provision, which were raised during a proceeding before the Polish Constitutional Court[[19]](#footnote-19). The Minister's authority has been questioned as potentially violating the constitutional principle of the separation of powers and the independence of the courts from other authorities. The meaning of the phrase ‘requires their immediate removal from duty to protect the dignity of the court or important interests of the judiciary’ has been challenged as vague, which could lead to its abuse by persons exercising superior control over the administrative activity of the courts.

Despite these objections, the Court ruled that this provision was constitutional[[20]](#footnote-20). It held that since the suspension is subject to mandatory review by the disciplinary court, which may decide to uphold the position of the president of the court or the Minister of Justice or revoke their decision. Therefore, the emphasis was not put on grounds related to the specific proceedings the judge in question is conducting, but other, non-substantive ones. It was also determined that the Minister of Justice was well-suited for the role, as his competence is closely related to the nature of his supervision over the functioning of the judiciary. At the time of the judgment, the Minister of Justice did not exercise his power even once.

The findings of the Constitutional Court had not been the subject of much controversy until recently. However, in recent years, the application of this provision has changed. I will provide several examples, but these are not exhaustive.

Judge Marta Pilśnik has been accused of disputing the appointment of neo-judges to the Supreme Court and challenging the legitimacy of the Disciplinary Chamber and the neo-KRS. This was due to her decision to rescind the arrest of a prosecutor and drop the criminal case against him, as the prosecutor's immunity was waived by the Disciplinary Chamber. The judge cited rulings from the European Court of Human Rights and the Court of Justice of the European Union, which questioned the legality of the Chamber. Under section 130(1) of the Act on the Organisation of Ordinary Courts, the Minister of Justice Zbigniew Ziobro suspended her from office. The reason given was that she had committed an act that harmed the public interest in the proper functioning of the justice system. This was due to her undermining the authority of the court and violating the important interests of the service, which eroded public trust in the justice system. In September 2022 the proceeding regarding her suspension was discontinued due to formal reasoning[[21]](#footnote-21). In January 2023 she was acquitted of charges pressed against her by the reformed Professional Liability Chamber of the Supreme Court, which replaced the liquidated Disciplinary Chamber[[22]](#footnote-22).

Similar proceedings were also instituted against judges Adam Synakiewicz and Anna Głowacka. Judge Anna Głowacka was acquitted of charges in November 2023[[23]](#footnote-23) and the proceedings in judge Synakiewicz’s case were discontinued due to formal reasoning (expiration of the period from Article 130 [3] of the Act on the Organisation of Ordinary Courts)[[24]](#footnote-24). Both of those judges brought actions before the ECHR. The applications were communicated, and the proceedings are still pending[[25]](#footnote-25). The National Council of the Judiciary expressed its position that the complaints are inadmissible since the judges did not exhaust all remedies provided by domestic law (because they had access to the Disciplinary Chamber) and ordering an immediate break in service istemporary and does not cause negative professional and financial consequences[[26]](#footnote-26).

Conclusion

The legal provisions in Poland that permit the suspension of a judge may not seem inherently dangerous. However, their application in the recent years is certainly concerning. It is therefore important to take measures to ensure that these provisions serve their intended purpose and are not used to repress or influence the courts' jurisprudence[[27]](#footnote-27).

Bibliography

**Literature**

1. Banaszak B., *Konstytucyjne ujęcie zasady niezawisłości sędziowskiej w Polsce*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2009, nr 6.
2. Leloup M., *Who Safeguards the Guardians? A Subjective Right of Judges to their Independence under Article 6(1) ECHR*, “European Constitutional Law Review” 2021, vol. 17, no. 3.
3. Sawiński J. [w:] *Prawo o ustroju sądów powszechnych. Komentarz*, red. A. Górski, Warszawa 2013.

**Legislation**

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483 z późn. zm.).

Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (t.j. Dz. U. z 2024 r. poz. 334 z późn. zm.).

**Case law**

Judgement of the European Court of Human Rights of 23 June 2016, no. 20261/12, *Baka v. Hungary*, HUDOC.

Judgement of the European Court of Human Rights of 25 September 2018, no. 76639/11, *Denisov v. Ukraine*, HUDOC.

Judgement of the European Court of Human Rights of 22 November 2016, no. 22254/14, *Erményi v. Hungary*, HUDOC.

Judgement of the European Court of Human Rights of 10 May 2021, no. 35599/20, *Juszczyszyn v. Poland*, HUDOC.

Judgement of the European Court of Human Rights of 6 July 2023, nos. 21181/19 and 51751/20, *Tuleya v. Poland*, HUDOC.

Postanowienie Sądu Najwyższego z 14.09.2022 r., I ZZ 6/22, LEX nr 3409505.

Postanowienie Sądu Najwyższego z 14.09.2022 r., I ZZ 7/22, LEX nr 3416895.

Wyrok Sądu Najwyższego z 10.01.2023 r., I ZSK 17/22, LEX nr 3482188.

Wyrok Sądu Najwyższego z 26.10.2023 r., I ZSK 10/23, LEX nr 3621086.

Wyrok Trybunału Konstytucyjnego z dnia 15 stycznia 2009 r. K 45/07 (Dz. U. Nr 9, poz. 57).

**Other sources**

Communicated Cases of 13 June 2022, nos. 46453/21 and 15928/22, *Synakiewicz v. Poland and Głowacka v. Poland,* HUDOC.

Małecki M., *Przesłanki zarządzenia natychmiastowej przerwy w czynnościach służbowych sędziego (art. 130 § 1 ustawy – Prawo o ustroju sądów powszechnych),* <https://www.iustitia.pl/images/pliki/ekspertyza130usp.pdf>.

Stanowisko Krajowej Rady Sądownictwa z dnia 27 lipca 2022 r. w sprawie skarg rozpoznawanych przed Europejskim Trybunałem Praw Człowieka: nr 46453/21 (Adam Synakiewicz p-ko Polsce) nr 15928/22 (Anna Głowacka p-ko Polsce), <https://sip.lex.pl/#/act/287706605/3170422/skargi-rozpoznawane-przed-europejskim-trybunalem-praw-czlowieka-nr-46453-21-adam-synakiewicz-p-ko...>.

1. M. Leloup, *Who Safeguards the Guardians? A Subjective Right of Judges to their Independence under Article 6(1) ECHR*, “European Constitutional Law Review” 2021, vol. 17, no. 3, pp. 394-421 [↑](#footnote-ref-1)
2. B. Banaszak, *Konstytucyjne ujęcie zasady niezawisłości sędziowskiej w Polsce*, „Zeszyty Naukowe Sądownictwa Administracyjnego” 2009, nr 6, s. 13-25. [↑](#footnote-ref-2)
3. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483 z późn. zm.). [↑](#footnote-ref-3)
4. Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (t.j. Dz. U. z 2024 r. poz. 334 z późn. zm.). [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. J. Sawiński [w:] *Prawo o ustroju sądów powszechnych. Komentarz*, red. A. Górski, Warszawa 2013, art. 129. [↑](#footnote-ref-6)
7. M. Leloup, *Who Safeguards the Guardians? A Subjective Right of Judges to their Independence under Article 6(1) ECHR*, “European Constitutional Law Review” 2021, vol. 17, no. 3, pp. 394-421. [↑](#footnote-ref-7)
8. Judgement of the European Court of Human Rights of 23 June 2016, no. 20261/12, *Baka v. Hungary*, HUDOC. [↑](#footnote-ref-8)
9. Judgement of the European Court of Human Rights of 10 May 2021, no. 35599/20, *Juszczyszyn v. Poland*, HUDOC. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Judgement of the European Court of Human Rights of 22 November 2016, no. 22254/14, *Erményi v. Hungary*, HUDOC. [↑](#footnote-ref-11)
12. Judgement of the European Court of Human Rights of 25 September 2018, no. 76639/11, *Denisov v. Ukraine*, HUDOC. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Judgement of the European Court of Human Rights of 10 May 2021, no. 35599/20, *Juszczyszyn v. Poland*, HUDOC. [↑](#footnote-ref-14)
15. Judgement of the European Court of Human Rights of 6 July 2023, nos. 21181/19 and 51751/20, *Tuleya v. Poland*, HUDOC. [↑](#footnote-ref-15)
16. Judgement of the European Court of Human Rights of 23 June 2016, no. 20261/12, *Baka v. Hungary*, HUDOC. [↑](#footnote-ref-16)
17. Judgement of the European Court of Human Rights of 6 July 2023, nos. 21181/19 and 51751/20, *Tuleya v. Poland*, HUDOC. [↑](#footnote-ref-17)
18. Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (t.j. Dz. U. z 2024 r. poz. 334 z późn. zm.). [↑](#footnote-ref-18)
19. Wyrok Trybunału Konstytucyjnego z dnia 15 stycznia 2009 r. K 45/07 (Dz. U. Nr 9, poz. 57). [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Postanowienie Sądu Najwyższego z 14.09.2022 r., I ZZ 7/22, LEX nr 3416895. [↑](#footnote-ref-21)
22. Wyrok Sądu Najwyższego z 10.01.2023 r., I ZSK 17/22, LEX nr 3482188. [↑](#footnote-ref-22)
23. Wyrok Sądu Najwyższego z 26.10.2023 r., I ZSK 10/23, LEX nr 3621086. [↑](#footnote-ref-23)
24. Postanowienie Sądu Najwyższego z 14.09.2022 r., I ZZ 6/22, LEX nr 3409505. [↑](#footnote-ref-24)
25. Communicated Cases of 13 June 2022, nos. 46453/21 and 15928/22, *Synakiewicz v. Poland and Głowacka v. Poland,* HUDOC. [↑](#footnote-ref-25)
26. Stanowisko Krajowej Rady Sądownictwa z dnia 27 lipca 2022 r. w sprawie skarg rozpoznawanych przed Europejskim Trybunałem Praw Człowieka: nr 46453/21 (Adam Synakiewicz p-ko Polsce) nr 15928/22 (Anna Głowacka p-ko Polsce), <https://sip.lex.pl/#/act/287706605/3170422/skargi-rozpoznawane-przed-europejskim-trybunalem-praw-czlowieka-nr-46453-21-adam-synakiewicz-p-ko...>, [dostęp: 19-03-2024]. [↑](#footnote-ref-26)
27. See also: M. Małecki, *Przesłanki zarządzenia natychmiastowej przerwy w czynnościach służbowych sędziego (art. 130 § 1 ustawy – Prawo o ustroju sądów powszechnych),* <https://www.iustitia.pl/images/pliki/ekspertyza130usp.pdf>, [dostęp: 19-03-2024]. [↑](#footnote-ref-27)